

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
DAMON ERNEST CALLAWAY 141-04-01041

Plaintiff,

-against-

NEW YORK CITY POLICE DEPARTMENT ALSO
OFFICER VELEZ,

Defendants.
----- X

ANSWER OF VELEZ

04 CV 1483 (NGG)(LB)

JURY TRIAL DEMANDED

RECEIVED
U.S. DISTRICT COURT, E.D.N.Y.

★ NOV 16 2004 ★

BROOKLYN OFFICE
MICHAEL A. CARROLL

Defendant Police Officer William Velez by his attorney, Michael A. Carroll,

Corporation Counsel of the City of New York, as and for an answer to the complaint, respectfully alleges, upon information and belief, as follows:¹

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "I" and its subparts of the Prisoner Form Complaint.

2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "II" and its subparts of the Prisoner Form Complaint, except admits that a grievance procedure for prisoners is in effect, and that upon information and belief, plaintiff is currently confined at the North Infirmary Command at Riker's Island.

3. Denies the allegations set forth in paragraph "III" and its subparts of the Prisoner Form Complaint, except admits that plaintiff purports to name the parties to this action as stated therein.

¹ An answer to plaintiff's complaint was filed on behalf of defendant New York City Police Department on or about July 27, 2004.

4. Denies the allegations set forth in paragraph "IV" of the Prisoner Form Complaint.

5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "IV-A" of the Prisoner Form Complaint.

6. Denies the allegations set forth in paragraph "V" of the Prisoner Form Complaint, except admits that plaintiff purports to seek the relief as stated therein.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE:

7. The complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE:

8. Defendant William Velez has not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof, nor has defendant Velez violated any act of Congress providing for the protection of civil rights.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE:

9. Defendant William Velez has not violated any clearly established constitutional or statutory rights of which a reasonable person would have known, and therefore, defendant Velez is entitled to qualified immunity.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:

10. At all times relevant to the acts alleged in the complaint, defendant Velez acted reasonably in the proper and lawful exercise of his discretion.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE:

11. Any injury alleged to have been sustained resulted from plaintiff's own culpable or negligent conduct and was not the proximate result of any act of the defendant Velez.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE:

12. To the extent that the complaint alleges any claims arising under the laws of the State of New York, plaintiff has failed to comply with New York General Municipal Law § 50-e and, accordingly, such claims are barred.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE:

13. Defendant William Velez had no personal involvement in the alleged incident.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE:

14. Plaintiff provoked any incident.

WHEREFORE, defendant William Velez requests judgment dismissing the complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
November 12, 2004

MICHAEL A. CARDOZO
Corporation Counsel of the
City of New York
Attorney for Defendant William Velez
100 Church Street, Room 3-183
New York, New York 10007
(212) 788-1575

By:



M. Vivian Najib (MN 6002)
Assistant Corporation Counsel

To: Pro se Damon Ernest Callaway
#141-04-01041
North Infirmery Command
1500 Hazen Street
East Elmhurst, New York 11370

DECLARATION OF SERVICE BY FIRST-CLASS MAIL

I, Vivian Najib, declare, pursuant to 28 U.S.C. § 1746, under penalty of perjury, that on November 12, 2004, I served the annexed Answer of Velez by depositing a copy of the same, enclosed in a first-class postpaid properly addressed wrapper, in a post office official depository under the exclusive care and custody of the United States Postal Service, within the State of New York, upon the following:

Pro se Damon Ernest Callaway
#141-04-01041
North Infirmary Command
1500 Hazen Street
East Elmhurst, New York 11370

Dated: New York, New York
November 12, 2004



Vivian Najib
Assistant Corporation Counsel

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DAMON ERNEST CALLAWAY 141-04-01041	Plaintiff,
-against-	
NEW YORK CITY POLICE DEPARTMENT ALSO OFFICER VELEZ,	Defendants.
ANSWER OF VELEZ	
MICHAEL A. CARDOZO <i>Corporation Counsel of the City of New York</i> <i>Attorney for Defendant William Velez</i> 100 Church Street New York, N.Y. 10007 <i>Of Counsel: M. Vivian Najib</i> <i>Tel: (212) 788-1575</i> NYCLIS No. 04 SF 010643	
Due and timely service is hereby admitted.	
New York, N.Y., 200.....	Esq.
Attorney for	